

OFFICE OF THE ATTORNEY GENERAL



JEFF SESSIONS
ATTORNEY GENERAL
STATE OF ALABAMA

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

Honorable Ken Guin
Member, House of Representatives
Post Office Box 470
Carbon Hill, Alabama 35549

Economic Development - Boards
of Directors - Offices and
Officers - Conflicts of
Interest

Although individual members of
the Walker County legislative
delegation may make nominations
for appointments to the board
of the Walker County Economic
and Industrial Development
Authority, such appointments
for nominations should be made
by the legislative delegation.

A state legislator may serve
as a member of the board of
directors of the Walker County
Economic and Industrial Development
Authority.

Any questions regarding the
State Ethics Law should be
referred to the State Ethics
Commission.

Dear Representative Guin:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION 1

In order to appoint a member to the Walker County Economic and Industrial Development Authority, is this appointment made on an alternating basis among the members of the legislative delegation, or must the delegation as "one authority" agree on a member to the board and make the appointment as a group?

FACTS, LAW AND ANALYSIS

The Economic and Industrial Development Authority of Walker County was created by Act No. 91-829. Section 1 of that Act states, "The members of such board [board of directors of the Authority] shall be appointed by the Walker County legislative delegation." [Brackets added,] There is no further direction in the statute as to whether this provision means the legislative delegation as a whole or on an alternative basis, among the individual members of the delegation.

When a statute is susceptible of two interpretations, the court will assume that the Legislature intended the statute to be workable and fair. State v. Russell County Tag Commission, 575 So.2d 1146 (Ala.Civ.App. 1991). Furthermore, in construing a statute, the fundamental rule is that it has a duty to ascertain and give effect to the intent of the Legislature. State v. Russell County Tag Commission, supra.

Although there is no specific legislative directive regarding the method of appointment, the legislative intent as ascertained from Section 1 of Act No. 91-829 would seem to be while individual legislators may make nominations for appointments for the Authority, such nominations for appointments should be made by the legislative delegation.

CONCLUSION

Although individual members of the Walker County legislative delegation may make nominations for appointments to the board of the Walker County Economic and Industrial Develop-

ment Authority, such appointments for nominations should be made by the legislative delegation.

QUESTION 2

Were the six appointments referenced above valid appointments, made pursuant to the Act?

FACTS, ANALYSIS, AND CONCLUSION

You stated in your request that certain members of the Walker County Legislative Delegation have appointed members to the Economic and Industrial Development Authority. You and your predecessor as a state representative did not participate in the appointment process.

Code of Alabama 1975, § 36-15-20 states that the Attorney General is not to issue opinions on moot questions; that is, questions on events that occur prior to the request for an opinion. The Attorney General is to give opinions on questions, the nature and character of which makes the advice sought necessary to the present performance of an official act which the officer must immediately perform. Code, § 36-15-20. The appointments about which you asked have already been made. Therefore, the Attorney General must refrain from determining if these appointments are valid.

This office urges the Walker County delegation to work together in making any appointments that are required to be made by law.

QUESTION 3

Is it a violation of state law for an individual to serve on the board of the Walker County Economic and Industrial Development Authority and also be a member of the State Legislature which entitles the legislator to participate in the selection of members on the Board?

FACTS, LAW AND ANALYSIS

The first issue to be considered is whether the positions in question are offices of profit. Section 280 of the Constitution of Alabama 1901 prohibits an individual from serving in more than one office of profit. Furthermore, Section 59 of the Constitution provides that no legislator shall, during the term for which he is elected, be appointed to an office of profit which is created or the emoluments increased during such term.

A state legislator holds an office of profit. Smith v. State, 276 Ala. 378, 162 So.2d 473 (1964). A board member of a county industrial development board does not hold an office of profit. Opinion of the Attorney General to Honorable R. C. Hagood, Mayor, Town of Phil Campbell, dated December 27, 1984, A.G. No. 85-00137. Therefore, there is no violation of Section 59 or Section 280 of the Constitution if an individual serves as a state legislator and as a board member of the Walker County Industrial Development Authority.

Section 1 of Act No. 91-829 which provides for the appointment of the board of directors of the Economic and Industrial Development Authority and their qualifications does not contain a prohibition against a member of the Legislature serving on the board.

Whether the legislator may serve on the board of the Authority and make appointments to that board as a member of the legislative delegation is an ethical question which must be addressed to the State Ethics Commission.

CONCLUSION

A state legislator may serve as a member of the board of directors of the Walker County Economic and Industrial Development Authority.

Any questions regarding the State Ethics Law should be referred to the State Ethics Commission.

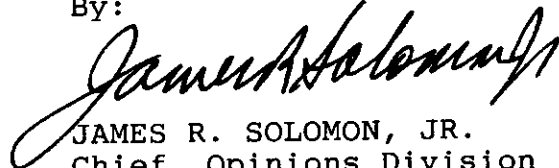
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I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact James R. Solomon, Jr., of my staff.

Sincerely,

JEFF SESSIONS
Attorney General

By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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